

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : Crim. No. 1:08-cr-0407

v.

JIMMY THOMAS MATHIS, JR. : Judge Sylvia H. Rambo

M E M O R A N D U M

Before the court is Jimmy Mathis, Jr.'s third motion filed pursuant to 28 U.S.C. § 2255. (*See* Docs. 84, 94, 99.) He argues that his trial counsel was incompetent by failing to contest the amount of drugs attributed to him, which affected his sentence. (Doc. 99.)

Mathis was sentenced on February 9, 2010. The judgment was affirmed by the Third Circuit Court of Appeals on December 16, 2010. (Doc. 77.) No petition for certiorari was filed. Mathis' sentence became final on or about March 2011. Title 28 U.S.C. § 2255(f) provides a one year period of limitation, which runs from the date on which the judgment of conviction becomes final. Mathis' judgment became final in March 2011.

The amount of drugs attributed to Mathis was known at the time of sentencing. In fact, he raised this issue before in his Third Circuit appeal. (Doc. 78-1.) The Third Circuit stated:

Mathis "calls into question" the District Court's findings of fact regarding the quantity of drugs he sold and his

possession of a weapon. However, Mathis admitted at his plea hearing that he sold a total of two ounces of cocaine base to various confidential informants, amounting to more than the 50 grams necessary to trigger a base offense level of 32.

(Doc. 78-1, p. 5.)¹

The instant motion is precipitated by this court's denial of a habeas petition filed on May 16, 2016 (Doc. 94) pursuant to *Johnson v. United States*, 135 S. Ct. 2551 (2015). This court dismissed Mathis' motion on the basis that his sentence, without the Armed Career Criminal designation, would have been the same under the regular guidelines based on his offense level and criminal history. (Doc. 98.) His attack at this stage is an attempt to lower his guidelines to obtain relief from the court's order of July 18, 2016 (Doc. 98).

Mathis has previously challenged the amount of drugs to his disadvantage, and cannot raise the issue again. Notwithstanding that fact, the instant petition is untimely and will be dismissed.

An appropriate order will issue.

s/Sylvia Rambo

SYLVIA H. RAMBO
United States District Judge

Dated: January 18, 2017

¹ The Third Circuit Court of Appeals affirmed this court's decisions on all issues raised by Mathis. *United States v. Mathis*, 404 Fed. App'x 595 (3d Cir. 2010).